

ESTTA Tracking number: **ESTTA292269**

Filing date: **06/29/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	V&S Vin & Sprit Aktiebolag (publ)
Granted to Date of previous extension	06/28/2009
Address	SE-117 97 Stockholm, SWEDEN

Attorney information	Joanne Ludovici-Lint McDermott Will & Emery LLP 600 13th Street, N.W. Washington, DC 20005-3096 UNITED STATES jludovici-lint@mwe.com, scoury@mwe.com, ksandacz@mwe.com, washington_ip_docket@mwe.com Phone:202-756-8000
----------------------	---

Applicant Information

Application No	77543333	Publication date	12/30/2008
Opposition Filing Date	06/29/2009	Opposition Period Ends	06/28/2009
Applicant	DR Distributors, LLC 1634 Greenmount Street Rockford, IL 61107 UNITED STATES		

Goods/Services Affected by Opposition


Class 005. All goods and services in the class are opposed, namely: Vitamins, dietary and nutritional supplements; nutritionally fortified water
Class 032. All goods and services in the class are opposed, namely: Carbonated drinking waters, flavored waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks; nutritionally fortified energy drinks


Grounds for Opposition


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1302003	Application Date	01/06/1983
Registration Date	10/23/1984	Foreign Priority Date	NONE
Word Mark	ABSOLUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1883/12/31 First Use In Commerce: 1978/05/03 Vodka		

U.S. Registration No.	2399045	Application Date	09/17/1998
Registration Date	10/31/2000	Foreign Priority Date	NONE
Word Mark	ABSOLUT MANDRIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1999/07/01 First Use In Commerce: 1999/07/01 Alcoholic beverages, namely vodka		

U.S. Registration No.	2529817	Application Date	05/09/2001
Registration Date	01/15/2002	Foreign Priority Date	NONE
Word Mark	ABSOLUT		
Design Mark			
Description of Mark	The mark consists of the stylized term ABSOLUT shown in the color red. The color red encompasses the entire mark and is not limited to any particular portion of the mark. Applicant claims the color red as a feature of the mark.		
Goods/Services	Class 033. First use: First Use: 1979/04/17 First Use In Commerce: 1979/06/17 Vodka		

U.S. Registration No.	2540331	Application Date	05/09/2001
Registration Date	02/19/2002	Foreign Priority Date	NONE
Word Mark	ABSOLUT		
Design Mark			
Description of Mark	The mark consists of the stylized term "ABSOLUT" shown in the color blue. The color blue encompasses the entire mark and is not limited to any particular portion of the mark. The color blue is claimed as a feature of the mark.		
Goods/Services	Class 033. First use: First Use: 1979/04/17 First Use In Commerce: 1979/06/17 Vodka		

U.S. Registration No.	2688447	Application Date	04/15/2002
Registration Date	02/18/2003	Foreign Priority Date	NONE
Word Mark	ABSOLUT KURANT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1992/09/27 First Use In Commerce: 1992/09/27 Alcoholic beverages, namely, vodka		

U.S. Registration No.	2785564	Application Date	04/15/2002
Registration Date	11/25/2003	Foreign Priority Date	NONE
Word Mark	ABSOLUT PEPPAR		

Design Mark	ABSOLUT PEPPAR
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1986/00/00 First Use In Commerce: 1986/00/00 Alcoholic beverages, namely, vodka


U.S. Registration No.	2785565	Application Date	04/15/2002
Registration Date	11/25/2003	Foreign Priority Date	NONE
Word Mark	ABSOLUT CITRON		
Design Mark	ABSOLUT CITRON		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1988/07/05 First Use In Commerce: 1988/07/05 Alcoholic beverages, namely, vodka		


U.S. Registration No.	2929287	Application Date	08/26/2002
Registration Date	03/01/2005	Foreign Priority Date	NONE
Word Mark	ABSOLUT RASPBERRI		
Design Mark	ABSOLUT RASPBERRI		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2004/08/31 First Use In Commerce: 2004/08/31 Alcoholic beverages namely distilled spirits		

U.S. Registration No.	2944410	Application Date	08/22/2002
Registration Date	04/26/2005	Foreign Priority	NONE

		Date	
Word Mark	ABSOLUT VANILIA		
Design Mark	<p style="text-align: center;">ABSOLUT VANILIA</p>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2003/02/28 First Use In Commerce: 2003/02/28 Alcoholic beverages, namely, distilled spirits		

U.S. Registration No.	3134255	Application Date	01/25/2005
Registration Date	08/22/2006	Foreign Priority Date	NONE
Word Mark	ABSOLUT APEACH		
Design Mark	<p style="text-align: center;">ABSOLUT APEACH</p>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2005/05/00 First Use In Commerce: 2005/05/00 Alcoholic beverages, namely, distilled spirits		

U.S. Registration No.	1244734	Application Date	01/17/1980
Registration Date	07/05/1983	Foreign Priority Date	NONE
Word Mark	COUNTRY OF SWEDEN .ABSOLUT.		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 033. First use: First Use: 1979/05/14 First Use In Commerce: 1979/05/14 Vodka		
U.S. Registration No.	1893279	Application Date	02/28/1994
Registration Date	05/09/1995	Foreign Priority Date	NONE
Word Mark	ABSOLUT COUNTRY OF SWEDEN VODKA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1978/05/03 First Use In Commerce: 1978/05/03 vodka		

Attachments	75555188#TMSN.gif (1 page)(bytes) 76254061#TMSN.gif (1 page)(bytes) 76254294#TMSN.gif (1 page)(bytes) 76395490#TMSN.gif (1 page)(bytes) 76395489#TMSN.gif (1 page)(bytes) 76395491#TMSN.gif (1 page)(bytes) 76444497#TMSN.gif (1 page)(bytes) 76443040#TMSN.gif (1 page)(bytes) 78553553#TMSN.jpeg (1 page)(bytes) 73246618#TMSN.gif (1 page)(bytes) 74494847#TMSN.gif (1 page)(bytes) ABSOLUTE ENERGY SHOT NOO.pdf (6 pages)(68306 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joanne Ludovici-Lint/
Name	Joanne Ludovici-Lint
Date	06/29/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

V&S VIN & SPRIT AKTIEBOLAG,
formerly known as
V&S VIN & SPRIT AKTIEBOLAG (publ),

Opposer,

v.

DR DISTRIBUTORS, LLC,

Applicant.

Opposition No. _____

Serial No: 77/543,333

Mark: ABSOLUTE ENERGY SHOT

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, VA 22313-1451

Re: Application No.: 77/543,333

Mark: ABSOLUTE ENERGY SHOT

Applicant: DR Distributors, LLC

Filed: August 10, 2008

Published: December 30, 2008

International Class: 05

For: Vitamins, dietary and nutritional supplements; nutritionally fortified water

International Class: 32

For: Carbonated drinking waters, flavored waters, and other non-alcoholic beverages,
namely, sports drinks, energy drinks, fruit drinks, vegetable drinks; nutritionally
fortified energy drinks

NOTICE OF OPPOSITION

V&S VIN & SPRIT AKTIEBOLAG, formerly known as V&S VIN & SPRIT

AKTIEBOLAG (publ), a corporation organized and existing under the laws of Sweden, having
its principal place of business at SE-117 97 Stockholm, Sweden (“Opposer”), by and through its
attorneys, hereby states that it will be damaged by registration of the mark “ABSOLUTE

ENERGY SHOT,” covered by U.S. Application Ser. No. 77/543,333, filed by DR DISTRIBUTORS, LLC (“Applicant”), and hereby opposes registration of same.

The grounds for the notice are as follows:

1. Opposer manufactures the world-famous vodka sold under the brand name ABSOLUT. Opposer, through its distributors, distributes and sells Opposer’s vodka throughout the United States. In addition, Opposer is and for many years has been engaged in the development, manufacture, promotion, distribution, offering for sale and sale of a wide variety of other products and services under its ABSOLUT marks.

2. Since long prior to Applicant’s filing of its application to register the mark “ABSOLUTE ENERGY SHOT” and prior to any use by Applicant, Opposer has used, advertised and promoted in commerce, and continues to use, advertise and promote in commerce, Opposer’s ABSOLUT marks in connection with Opposer’s broad range of products and services, including vodka.

3. Opposer owns extensive common law rights to its ABSOLUT marks. In addition, Opposer owns numerous U.S. trademark and service mark registrations for ABSOLUT alone and in combination with other terms and designs for a wide variety of products and services, including vodka. (Hereafter these registered and common law marks are collectively referred to as the “ABSOLUT Marks.”) Among Opposer’s federally registered marks are the following, which are currently registered on the Principal Register and have not been abandoned:

Trademark	Registration No.	Registration Date	Goods
ABSOLUT	1,302,003	10/23/84	Vodka
ABSOLUT MANDRIN	2,399,045	10/31/00	Vodka
ABSOLUT	2,529,817	01/15/02	Vodka
ABSOLUT (Stylized)	2,540,331	02/19/02	Vodka
ABSOLUT KURANT	2,688,447	02/18/03	Vodka
ABSOLUT PEPPAR	2,785,564	11/25/03	Vodka
ABSOLUT CITRON	2,785,565	11/25/03	Vodka
ABSOLUT RASPBERRI	2,929,287	03/01/05	Distilled spirits
ABSOLUT VANILLA	2,944,410	04/26/05	Distilled spirits

Trademark	Registration No.	Registration Date	Goods
ABSOLUT APEACH	3,134,255	08/22/06	Distilled spirits
ABSOLUT COUNTRY OF SWEDEN	1,244,734	07/05/83	Vodka
ABSOLUT COUNTRY OF SWEDEN	1,893,279	05/09/95	Vodka

4. The registrations set forth in Paragraph 3 are valid and subsisting and in full force and effect. In addition, Registration Nos. 1,244,734, 1,302,003, 1,893,279 and 2,399,045, 2,529,817, 2,540,331 and 2,688,447 have achieved incontestable status under 15 U.S.C. §§ 1065 and 1115(b).

5. Opposer has expended substantial resources to advertise and promote the above-described products, and other products and services, all under its ABSOLUT Marks.

6. By reason of Opposer's advertisement, sale, offering for sale, promotion and use, and the world-wide distribution of Opposer's products and services, Opposer's ABSOLUT Marks have come to be recognized as signifying Opposer and its products and services. Opposer has built up extensive goodwill in its ABSOLUT Marks.

7. Long prior to Applicant's filing of its application to register the mark "ABSOLUTE ENERGY SHOT" and prior to any use by Applicant, purchasers had come to recognize Opposer's ABSOLUT Marks as identifying goods and services emanating exclusively from Opposer.

8. Opposer's ABSOLUT Marks are famous and have been famous since long prior to Applicant's filing of its application to register the mark "ABSOLUTE ENERGY SHOT" and prior to any use by Applicant.

9. Notwithstanding Opposer's prior rights in and to Opposer's ABSOLUT Marks, on August 10, 2008, Applicant filed an application for the mark "ABSOLUTE ENERGY SHOT" for "Vitamins, dietary and nutritional supplements; nutritionally fortified water" in

International Class 05 and “Carbonated drinking waters, flavored waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks; nutritionally fortified energy drinks” in International Class 32 (Application Serial No. 77/543,333). That application was published for opposition on December 30, 2008 in the Official Gazette (Trademarks) of the United States Patent and Trademark Office.

10. Opposer was granted an extension of time until June 28, 2009 to file a notice of opposition. June 28, 2009 fell on a Sunday, resulting in an effective deadline to file a notice of opposition of June 29, 2009. Therefore, this Notice of Opposition is being timely filed.

11. Applicant’s applied-for goods are similar and related to the products and services with which Opposer uses its ABSOLUT Marks.

12. Applicant’s mark “ABSOLUTE ENERGY SHOT” is confusingly similar to Opposer’s ABSOLUT Marks, and Applicant’s use and registration of “ABSOLUTE ENERGY SHOT” with the goods set forth in Applicant’s application are likely to cause confusion, deception, and/or mistake among the relevant public.

13. Applicant’s use and registration of the mark “ABSOLUTE ENERGY SHOT” are likely to falsely suggest a connection with Opposer and Opposer’s ABSOLUT Marks.

14. Applicant’s use and registration of the mark “ABSOLUTE ENERGY SHOT” are likely to dilute the distinctiveness of Opposer’s famous ABSOLUT Marks.

15. Applicant’s use and registration of the mark “ABSOLUTE ENERGY SHOT” interfere with Opposer’s ABSOLUT Marks and will damage Opposer, its business and its goodwill.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant’s mark and prays that it be denied.

The requisite filing fee prescribed by 37 C.F.R. § 2.6(a)(17), in the amount of \$600.00, should be charged to Deposit Account No. 500417. If there are any additional fees due in

connection with this Notice of Opposition, they should also be charged to Deposit Account No. 500417, and any excess fees should be credited to same. All correspondence relating to this matter should be directed to the undersigned attorney for Opposer.

Respectfully submitted,

V&S VIN & SPRIT AKTIEBOLAG,
formerly known as
V&S VIN & SPRIT AKTIEBOLAG (publ)

Dated: June 29, 2009

By: /Joanne Ludovici-Lint/
Joanne Ludovici-Lint
McDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, D.C. 20005
Telephone: (202) 756-8000
Facsimile: (202) 756-8087

Attorney for Opposer

CERTIFICATE OF SERVICE

Opposer V&S VIN & SPRIT AKTIEBOLAG, formerly known as V&S VIN & SPRIT AKTIEBOLAG (publ), hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon the attorney of record for Applicant DR DISTRIBUTORS, LLC on this 29th day of June, 2009, by First Class U.S. Mail, postage prepaid, at the following address:

Charles P. Guarino, Esq.
Nicoll, Davis & Spinella, LLP
95 Route 17 South, Suite 203
Paramus, NJ 07652

/Joanne Ludovici-Lint/
Attorney for Opposer

WDC99 1739562-1.025718.0823